



UNITED STATES PATENT AND TRADEMARK OFFICE

MAY - 1 2002

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

MAILED

MAY - 1 2002

OFFICE OF THE DIRECTOR
TC 3800

Ostrolink, Faber, Gerb & Soffen, LLP
1180 Avenue of the Americas
New York, NY 10036-8403

Paper No. 8

In re application of
Michael Lax et al.
Application No. 09/858,457
Filed: May 16, 2001
For: CASE WITH INTERNAL LOCK

: **DECISION ON PETITION**
:
: **TO MAKE SPECIAL**
:
: **(INFRINGEMENT)**
:
:

This is a decision on the petition under 37 C.F.R §1.102(d) to make the above-identified application special that was filed on May 16, 2001. The delay in treating this petition is sincerely regretted.

The petition requests that the above-identified application be made special under the procedure set forth in MPEP 708.02, item II: Infringement.

MPEP 708.02 states that a Petition to Make Special based on Infringement must have the following: (1) the appropriate petition fee under 37 CFR 1.17(i); (2) a statement by the assignee, applicant, or attorney alleging: (A) that there is an infringing device or product actually on the market; (B) that a rigid comparison of the alleged infringing device or product with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and (C) that he or she has made a careful and thorough search of the prior art, or has good knowledge of the prior art, and has sent a copy of the references deemed most closely related to the subject matter encompassed by the claims.

The petition filed May 16, 2001 lacks requirement 2(A), above. In view of this deficiency, the petition is **DISMISSED**.

The petition indicates that the applicant's believe that there is an infringing device on the market, based upon a competitor's marketing brochure that indicates that the product will be made available by the autumn of 2001. Having a belief that such a device is on the market is insufficient. Proposed product release dates are notoriously unreliable and cannot be the basis for concluding that there is an infringing device **on the market**.

Any request for reconsideration must be filed within TWO MONTHS of the date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Should petitioner desire reconsideration, he should supplement this petition by a declaration or statement giving the information as outlined above.

Applicant should promptly submit a renewed petition to the Commissioner of Patents and Trademarks, Washington, D.C. 20231. The envelope should indicate that the correspondence be brought to the attention of Technology Center 3600.

Until the renewed petition is submitted, the application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.



Steven N. Meyers
Special Programs Examiner
Technology Center 3600
(703) 308-3868

snm/snm: 5/2/02